IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/03/2004

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.17688 of 1998
and
W.M.P.No.26778 of 1998

1. Director of School Education,
Chennai-600 006.

2. Director of Adi Dravidar Welfare,
Chennai-600 005. .. Petitioners

-Vs-

1. R.S.Srinivasan

2. The Registrar,
Tamil Nadu Administrative Tribunal,
High Court Campus, Chennai-600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorari, as stated therein.

For petitioners : Mr.S.T.S.Moorthy, Spl.G.P.(W)

For respondents : Mr.C.Selvaraju for R-1
R-2 Tribunal.

:ORDER

M. KARPAGAVINAYAGAM, J.

The State through the Director of School Education, Chennai and another, has filed this writ petition for issuance of a writ of certiorari and to quash the order of the Tribunal in O.A.No.2144 of 1995 dated 12.12.1997, giving direction on the application filed by R.S. Srinivasan, the first respondent herein to re-fix his scale of pay in the scale applicable to the post of Headmaster of the Elementary School.

2. R.S.Srinivasan, the first respondent herein filed O.A.No.2144 of 1995 before the Tribunal, praying for a direction to the petitioners herein, the State, to re-fix the scale of pay to him in the scale of pay for the post

of Headmaster of the Eleme y School or in the scale of pay for the post of Headmaster of the Middle School or to revert him as Headmaster of Elementary School or Middle School in Welfare Schools in Madras Revenue District or Saidapet Education District.

3. The case of the applicant in the said O.A. is as follows:

(a) The applicant joined as a Secondary Grade Headmaster in the Elementary School at Pazhavanakudi on 19.9.1960 in Tanjore District. In 1962, he was posted as Secondary Grade Teacher in the District Board High School. He passed B.T. in 1974 and as such, he became eligible to be promoted as B.T. Assistant. However, he was promoted only in the year 1987.

(b) The Fifth Pay Commission revised the scale of pay in respect of teachers, especially in respect of Elementary School Headmasters and B.T. Headmasters of Middle Schools. In pursuance of the Pay Commission recommendations, many of the juniors of the first respondent herein continued to work in the Elementary School as Headmasters and they were getting higher scale of pay than the applicant, the first respondent herein. The Basic Pay, Selection Grade Pay and Special Grade Pay for Elementary School Headmaster is Rs.1,400/-, Rs.1,640/- and Rs.2 000/- respectively. For the Middle School Headmaster, the respective pay is Rs.1,640/-, Rs.2,000/- and Rs.2,200/-.

(c) Under Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1 989, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, it shall be fixed at the stage next above the substantive pay. Had the applicant continued as Elementary School Headmaster, he would have been eligible for the Special Grade Pay of Rs.2,000/-. Similarly, if he had been promoted as Headmaster of the Middle School instead of being continued as B.T. Assistant in the High School, he would have been eligible to get the Special Grade Pay of Rs.2,200/-. On the other hand, the applicant who has acquired higher qualification, is given the scale of pay of Rs.1,400/-, which is the basic pay for B.T. Assistant. Therefore, the scale of pay has to be re-fixed for the applicant in the scale of pay for the post of Elementary School Headmaster or for the post of Middle School Headmaster.

(d) Learned counsel for the applicant also brought to the notice of the Tribunal the Government Order in G.O.Ms.No.57, Finance (Pay Cell-II) Department, dated 28.1.1991, by pointing out paragraphs 2 and 4 and contended that the applicant is entitled to the scale of pay of Rs.2,000/- which is the Special Grade Pay for Elementary School Headmaster.

(e) Though learned Government Advocate opposed the case of the applicant before the Tribunal on the ground that G.O.Ms.No.57 dated 28.1.1 991 would not apply to the applicant, the Tribunal took into consideration the paragraphs 2 and 4 of the said G.O. and held that after 1.6 .1988, the applicant would have drawn more pay in the revised pay scale of Elementary School Headmaster, the post in which he initially joined, than he was drawing in the officiating post of B.T. Assistant and therefore, the applicant is entitled to the Special Grade Pay of Elementary School Headmaster with effect from 1.6.1988. On the basis of this finding, the Tribunal directed the State to grant the Basic Pay of Rs.2,000/- to the applicant with effect from 1.6.1988 with all consequential benefits. This order is under challenge before this Court in the writ petition.

4. Mr.S.T.S.Moorthy, learned Special Government Pleader, while assailing the impugned order would state that the Tribunal had directed to

re-fix the pay of the first respondent in a different slab applicable to the different category of post, on the basis of erroneous reading of the Pay Rules and that the Tribunal gave such a direction under misconception of law.

5. In justifying the reasonings given by the Tribunal, Mr.C. Selvaraju, learned counsel for the first respondent would reiterate the submissions made before the Tribunal.

6. We have carefully considered the submissions made by learned counsel for the parties and also gone through the typed set of papers as well as the impugned order.

7. Even at the threshold, we shall state that the claim made by the applicant, the first respondent herein, on the basis of the fact that he joined as Headmaster in Elementary School in 1960 and from then onwards, he has been working and thereafter, he was promoted as B.T. Assistant in 1987, cannot be on the basis of correct facts.

8. From the Service Register of the first respondent, as pointed by the learned Special Government Pleader, it is seen that the first respondent was appointed as Secondary Grade Teacher on 19.9.1960 in Adi Dravidar Welfare School. He worked upto 30.4.1961. Subsequently he was ousted from service. Again, he was appointed as Secondary Grade Teacher with effect from 1.6.1961 in Harijan Welfare School and he was relieved from his duty on 30.6.1962. The periods he worked between 19.9.1960 and 30.4.1961 and 1.6.1961 and 30.6.1962, were only on temporary basis, that too, he worked in these periods as Secondary Grade Teacher. He was never the Headmaster in any of the Elementary School. It is also evident that the appointment of the first respondent for these periods was purely on temporary basis and his services were not regularised and therefore, these services have no bearing on him.

9. It is also noticed from the records that the first respondent was appointed as Secondary Grade Assistant with effect from 30.7.1962 in School Education Department and only thereafter, his services were regularised by the letter of the Special District Educational Officer, Tanjore dated 26.12.1963. Then, he was appointed as Secondary Grade Assistant. As per the Government rules, he was awarded Selection Grade on 1.4.1974 and Special Grade on 1.6.1981 respectively, on the basis of his services rendered from 30.7.1962. On his getting higher qualification, he was promoted as B.T. Assistant and was working as such with effect from 5.11.1987. His services in the post of B.T. Assistant were regularised only from that date.

10. According to the applicant, had he continued as Elementary School Headmaster, and had he been promoted as Headmaster of the Middle School respectively, he would have become eligible for Rs.2,000/- as Special Grade Pay. But it is a matter of record that the first respondent was never in the regularised service as Elementary School Headmaster. His services were regularised only with effect from 30.7.1962, that too under School Education Department.

11. It is to be further noted that a separate scale of pay for Primary School Headmaster was allowed only with effect from 1.6.1988, during which period, the first respondent was not at all in the service of Elementary School and during that period, he was serving as B.T. Assistant under School Education Department with effect from 5.11.1987 . To reiterate, the first respondent never worked as Primary School Headmaster or even as a regular Secondary Grade Assistant in the Department of Elementary Education.

12. Primary and Middle Schools are treated as separate entity for the

purpose of appointment, promotion and retrenchment and they are functioning under separate Director, namely Director of Elementary Education. On the other hand, High and Higher Secondary Schools are under the purview of the Director of School Education, which forms a separate entity. Hence, the comparison made in respect of teachers working under different category of posts under different services and different units, is unsustainable.

13. Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989 is not applicable to the first respondent, since he was substantively appointed only with effect from 30.7.1962 and not from 19.9.1960 as claimed by the first respondent. All his past services in the Adi Dravidar Welfare School were only on temporary basis. Admittedly, they were not regularised and the services till then could not be taken into account for the purpose of calculation of length of service for the award of Selection Grade and Special Grade.

14. According to Fundamental Rule 9(28), "Substantive Pay" means the pay other than the Special Pay, Personal Pay or Emoluments classed as pay by the Government under Rule 9(21)(a)(iii), to which the Government servant is entitled on account of the post to which he has been appointed substantively or by regularisation of his substantive position in the cadre. Thus, the claim of the first respondent that he joined as Elementary School Headmaster and as such, that post is substantive post, is unsustainable both in law and on facts.

15. For the foregoing reasonings, we are constrained to hold that the impugned order of the Tribunal is not based on the correct position of law and facts. As such, the same is liable to be set aside. Accordingly, the impugned order is set aside. The writ petition is allowed. No costs. Consequently, W.M.P.No.26778 of 1998 is closed.

Index: Yes
Internet: Yes

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To
1. Director of School Education,
Chennai-600 006.

2. Director of Adi Dravidar Welfare,
Chennai-600 005.

3. The Registrar,
Tamil Nadu Administrative Tribunal,
High Court Campus, Chennai-600 104.

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